

FEDERAL ACQUISITION REGULATION (FAR) CLAUSES
2004 UPDATE FOR EMERGENCY EQUIPMENT RENTAL AGREEMENT (EERA), FORM OF-294

Replace the existing FAR clauses on the back of the EERA form with the following:

52-213-4 - Terms and Conditions -- Simplified Acquisitions (Other Than Commercial Items) (July 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

- (1) The clauses listed below implement provisions of law or Executive order:
 - (i) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
 - (ii) 52.222-21, Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).
 - (iii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iv) 52.225-13, Restrictions on Certain Foreign Purchases (Dec 2003) (E.O.S, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
 - (v) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
- (2) Listed below are additional clauses that apply:
 - (i) 52.232-1, Payments (Apr 1984).
 - (ii) 52.232-8, Discounts for Prompt Payment (Feb 2002).
 - (iii) 52.232-11, Extras (Apr 1984).
 - (iv) 52.232-25, Prompt Payment (Oct 2003).
 - (v) 52.233-1, Disputes (July 2002).
 - (vi) 52.244-6, Subcontracts for Commercial Items (Jul 2004).
 - (vii) 52.253-1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

- (1) The clauses listed below implement provisions of law or Executive order:
 - (i) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jun 2004) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)
 - (ii) 52.222-20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)
 - (v) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).
 - (vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).
 - (vii) 52.223-5, Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).
 - (viii) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use within the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition--
 - (A) Is set aside for small business concerns; or
 - (B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000.)
 - (ix) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)
 - (x) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xi) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241). Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over \$25,000).

(ii) 52.211-17, Delivery of Excess Quantities (Sep 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (Jun 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (Nov 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 52.252-2, Clauses Incorporated by Reference (Feb 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

or

<http://farsite.hill.af.mil/>

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights –

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of Clause)

ADDITIONAL FAR CLAUSES THAT APPLY TO EERA'S:

52.204-7 Central Contractor Registration (Oct 2003)

52.208-4 Vehicle Lease Payments (Apr 1984)

52.208-5 Condition Of Lease Vehicles (Apr 1984)

52.208-6 Markings Of Leased Vehicles (Apr 1984)

52.236-7 Permits and Responsibilities (Nov 1991)

52.243-1 Changes - Fixed Price (Aug 1987) Alternate I (Apr 1984)